

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RIGOBERTO CARDENAS-BORBON,

Petitioner,

v.

CASE NO. 10-13548
HONORABLE AVERN COHN

SHERRY BURT,

Respondent.

_____ /

ORDER AMENDING CASE CAPTION¹
AND
GRANTING PETITIONER'S MOTION TO REOPEN AND AMEND (Doc. 15),
REOPENING CASE, AND SETTING DEADLINES FOR PLEADINGS

I.

This is a habeas case under 28 U.S.C. § 2254. Michigan prisoner Rigoberto Cardenas-Borbon ("Petitioner"), was convicted of possession with intent to deliver 1,000 or more grams of cocaine and conspiracy to possess with intent to deliver 1,000 or more grams of cocaine following a jury trial in the Macomb County Circuit Court in 2006. He was sentenced to consecutive terms of 16 to 40 years imprisonment.

In 2010, the Court stayed Petitioner's pending habeas proceedings so that he could exhaust additional claims in the state courts and administratively closed this case. (Doc. 5). Petitioner now seeks to reopen this case and proceed on an amended habeas petition. Petitioner asserts that he has exhausted all of his current claims and completed the state court process. For the reasons that follow, Petitioner's motion will be granted.

¹The case caption to reflect that the proper Respondent in this case is now Sherry Burt, the warden at Muskegon Correctional Facility, where Petitioner is currently incarcerated. See *Edwards Johns*, 450 F. Supp. 2d 755, 757 (E.D. Mich. 2006); See also Rule 2(a), 28 foll. U.S.C. § 2254.

II.

It appears from Petitioner's pleadings that he has exhausted state court remedies as to his habeas claims and has substantially complied with the Court's previous order. A federal court may grant a timely request to re-instate a section 2254 petition. See e.g., Rodriguez v. Jones, 625 F. Supp. 2d 552, 559 (E.D. Mich. 2009). Accordingly, the case will be re-opened.

Further, because the request to amend displays no indication of delay or bad faith, and no sign of prejudice to Respondent appears, Petitioner may amend his petition. Coe v. Bell, 161 F.3d 320, 341-342 (6th Cir. 1998).

III.

For the reasons stated above, Petitioner's motion to reopen and amend is GRANTED. This case is REOPENED for further consideration of the amended habeas petition. Respondent shall file an answer to the amended petition, as well as the relevant state court materials, on or before **October 4, 2013**. Petitioner shall then have until **November 18, 2013** to file any reply to that answer.

SO ORDERED.

S/Avern Cohn
UNITED STATES DISTRICT JUDGE

Dated: April 3, 2013

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, April 3, 2013, by electronic and/or ordinary mail.

S/Sakne Chami
Case Manager, (313) 234-5160